



Signed and Filed: February 26, 2021

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5 HANNAH L. BLUMENSTIEL  
6 U.S. Bankruptcy Judge

7 UNITED STATES BANKRUPTCY COURT

8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 In re: ) Case No. 14-31016 HLB  
10 KONSTANTIN P. SAVVON and ADINE ) Chapter 7  
D. LE, )  
11 )  
12 Debtors. )  
13 J. MATT NAWROCKI, ) Adv. Proc. No. 14-3129 HLB  
14 Plaintiff, )  
15 v. )  
16 KONSTANTIN P. SAVVON and ADINE )  
D. LE, )  
17 Defendants. )

ORDER DENYING APPLICATION FOR INJUNCTIVE RELIEF

This case comes before the court on Defendants' Konstantin Savvon and Adine Le's Ex Parte Application for Order Shortening Time,<sup>1</sup> as well as Mr. Savvon and Ms. Le's Application for Injunctive Relief.<sup>2</sup> In their Ex Parte Application, Mr. Savvon and Ms. Le demand a hearing on their Application on March 1 or 2, 2021. Through their Application, Mr. Savvon and Ms. Le demand an order (the "TRO") temporarily restraining Mrock & Associates

27 <sup>1</sup> Dkt. 41 (the "Ex Parte Application").

28 <sup>2</sup> Dkt. 36 (the "Application").

1 ("Mrock") from proceeding with a foreclosure sale allegedly  
2 scheduled for March 3, 2021.

3 This adversary proceeding was commenced by J. Matt Nawrocki  
4 (who is allegedly the sole owner of Mrock) on October 7, 2014.  
5 Mr. Nawrocki's complaint sought a judgment declaring  
6 nondischargeable a debt owed to him by Mr. Savvon and Ms. Le,  
7 pursuant to sections 523(a)(2)(A), (a)(4), and (a)(6).<sup>3</sup> On March  
8 11, 2016, the parties filed a Stipulation of Dismissal.<sup>4</sup> The  
9 court entered an order dismissing this action on March 18, 2016.<sup>5</sup>

10 Now, nearly five years following entry of the Dismissal  
11 Order, Mr. Savvon and Ms. Le demand a TRO. They allege that  
12 Mrock is about to foreclose on their real property because they  
13 did not satisfy their obligations under the settlement agreement  
14 that apparently led to the filing of the Stipulation of Dismissal  
15 and ultimately, to entry of the Dismissal Order. Mr. Savvon and  
16 Ms. Le concede that they did not timely secure the financing  
17 necessary to make a payment required by the Settlement Agreement,  
18 although they blame this on the COVID-19 pandemic. They contend  
19 that they will prevail on the merits of their assertion that  
20 their performance is excused by impossibility.

21 There are significant problems with the Application. First  
22 and foremost, Mr. Savvon and Ms. Le demand that the court enjoin  
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24 <sup>3</sup> Unless otherwise indicated, all statutory citations shall refer to Title 11  
25 of the United States Code, aka the "Bankruptcy Code". In addition, all  
26 citations to a "Bankruptcy Rule" shall refer to one of the Federal Rules of  
Bankruptcy Procedure; and all citations to a "Civil Rule" shall refer to one  
of the Federal Rules of Civil Procedure.

27 <sup>4</sup> Dkt. 32.

28 <sup>5</sup> Dkt. 34 (the "Dismissal Order").

1 Mrock, which is not a party to this action, has never been served  
2 with process, and over which the court does not have personal  
3 jurisdiction. Mr. Savvon and Ms. Le ignore these fatal issues.

4 They focus instead on subject matter jurisdiction, in  
5 support of which they contend that the court retained  
6 jurisdiction under their settlement agreement with Mr. Nawrocki  
7 to "mediate any future disputes regarding the settlement of this  
8 action." This "reservation" of jurisdiction - set forth in a  
9 settlement agreement this judge has never seen - is not  
10 sufficient to give the court jurisdiction to issue injunctive  
11 relief.

12 Still further, in order to be entitled to injunctive relief,  
13 Mr. Savvon and Ms. Le must show (among other things) a likelihood  
14 of success on the merits. "A plaintiff seeking a preliminary  
15 injunction must establish that he is likely to succeed on the  
16 merits, that he is likely to suffer irreparable harm in the  
17 absence of preliminary relief, that the balance of equities tips  
18 in his favor, and that an injunction is in the public interest."<sup>6</sup>  
19 "The first factor under Winter is the most important - likely  
20 success on the merits."<sup>7</sup> In other words, Mr. Savvon and Ms. Le  
21 must plead some affirmative claim against Mrock, and must  
22 demonstrate that they are likely to succeed on the merits of that  
23 claim, in order to be entitled to injunctive relief.

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26 <sup>6</sup> Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008) (citations  
27 omitted); see Doe v. McAleenan, 415 F. Supp. 3d 971, 976 (S.D. Cal. 2019)  
28 (noting that the standard for issuing a TRO is the same as that pertinent to  
the issuance of a preliminary injunction).

<sup>7</sup> Garcia v. Google, Inc., 786 F.3d 733, 740 (9th Cir. 2015).

1 But they have not filed a complaint. The only affirmative  
2 argument they make is set forth in the Application, in which they  
3 assert that their timely performance under the settlement  
4 agreement was rendered impossible by the COVID-19 pandemic. If  
5 Mr. Savvon and Ms. Le would like injunctive relief, they must  
6 file a complaint that asserts causes of action against Mrock.  
7 Because they have not done so, their request for a TRO fails.

8        And finally, given the fatal flaws from which their  
9 Application suffers, the court sees no need to grant the Ex Parte  
10 Application.

11 | Accordingly, the court ORDERS as follows:

12        1. The Ex Parte Application is hereby **DENIED**.

13        2. The Application is hereby **DENIED**.

\*\*END OF ORDER\*\*

**Court Service List**

[None]